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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052197
Party	Defendant Supercar Collectibles Limited
Correspondence Address	ROBERT D BUYAN STOUT UXA BUYAN & MULLINS LLP 4 VENTURE , STE 300 IRVINE, CA 92618 UNITED STATES rbuyan@patlawyers.com
Submission	Testimony For Defendant
Filer's Name	Robert D. Buyan
Filer's e-mail	rbuyan@patlawyers.com
Signature	/Robert D. Buyan/
Date	09/29/2011
Attachments	Testimony_SULLIVAN.pdf (29 pages)(1455112 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Unites States Trademark
Registration No. 2,049,847

Terri Yenke Gould, Executor,

Petitioner,

vs

General Marketing
Capital, Inc./Supercar
Collectables Limited,

Respondent.

- - - - -

The Telephonic Deposition of JAMES
R. SULLIVAN taken pursuant to Notice of
Taking Deposition, taken before Vicki A.
Gardner, a Notary Public in and for the
County of Ramsey, State of Minnesota, taken
on August 30, 2011, at 701 4th Avenue South,
Suite 500, Minneapolis, Minnesota, commencing
at approximately 2:00 p.m.



1 APPEARANCES VIA TELEPHONE:

2 ON BEHALF OF THE PLAINTIFF:

3 George E. Bullwinkel
4 425 Woodside Avenue
5 Hinsdale, Illinois 60521

6 ON BEHALF OF THE DEFENDANT:

7 Robert D. Buyan
8 Stout, Uxa, Buyan & Mullins, LLP
9 4 Venture, Suite 300
10 Irvine, California 92618

11 Also present was Scott D. Dahlberg.

12 ***

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P R O C E E D I N G S

JAMES R. SULLIVAN,
called as a witness, being first duly sworn,
was examined and testified as follows:

* * *

EXAMINATION

* * *

BY MR. BUYAN:

Q. Good afternoon, Mr. Sullivan.

A. Good afternoon.

Q. Would you state your full name, current
occupation and address for the record,
please?

A. James Robert Sullivan. My current occupation
is I am an auto parts manager. And my
address is 9801 Fourth Avenue South,
Bloomington, Minnesota 55420.

Q. Did you have a prior relationship with
Supercar Collectables, Limited?

A. Yes, I did.

Q. What was the nature of that relationship?

A. I was one of the original co-founders of the
company back in '95 when we started.

I separated I think from them at
the end of 2007, early 2008.



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1 Q. You filed the initial application that
2 matured into U.S. Trademark Registration
3 2049857, which is the subject of this
4 cancellation proceeding, is that correct?

5 A. Yes, that's correct.

6 Q. Did you subsequently assign that registration
7 to Supercar Collectables, Limited?

8 A. Yes, I did.

9 Q. After you assigned that registration to
10 Supercar Collectables, Limited, did you
11 continue working as a co-owner of the company
12 and internal part of the company for some
13 years after that?

14 A. Yes, I did.

15 Q. Do you recall -- you heard Mr. Dahlberg's
16 testimony about the dispute with Mr. Heth.
17 Do you recall that?

18 A. Yes, I do.

19 Q. Were you present during any of the settlement
20 discussions that led to the agreement with
21 Mr. Heth?

22 A. I was present at a phone conversation with
23 Mr. Heth at Jim Thorn's (ph) house. I did
24 not specifically talk to David Heth, but I
25 was there at the time.



1 Q. Is it your understanding that the company did
2 pay the confidential amount that Mr. Dahlberg
3 referred to in settlement of the dispute with
4 Mr. Heth?

5 A. Yes, we did.

6 Q. You also heard Mr. Dahlberg's testimony about
7 being present at the first Yenko reunion in
8 Hendersonville, Tennessee, in the late
9 nineties, did you not?

10 A. Yes, I did.

11 Q. Were you present at that reunion?

12 A. Yes, I was.

13 Q. Were you aware of any members of the Yenko
14 family present at that reunion?

15 A. Yes, I was.

16 Q. Who?

17 A. That was Hope Yenko.

18 Q. Were there any other dignitaries or Yenko
19 associates present at that reunion?

20 A. Yes. Donna May Mimms (ph), who I believe was
21 like office manager. Trying to remember.
22 Connolly. John Connolly maybe or whatever.

23 I think he had some kind of tie to
24 the Yenko estate. I'm not sure what capacity
25 he was there under.



1 There was also Ed. And I can't
2 remember, Loller (ph) or something like that.
3 He was a former service manager at Yenko
4 Chevrolet.

5 Q. Are you aware of any reason why Hope Yenko or
6 the other individuals that you just mentioned
7 would not have seen the Yenko models that you
8 had with you at that reunion?

9 A. No, they would have seen them.

10 Q. Did you actually sell models at that reunion?

11 A. Yes, we did.

12 Q. Do you recall how many different Yenko models
13 you had available for sale at that reunion?

14 A. Oh, I would say approximately three or four
15 different ones at that point.

16 Q. I am going to ask the reporter to hand you
17 what was previously marked as Respondent's
18 Exhibit Number 30. That's the photograph.

19 A. Okay, I have it.

20 Q. Can you identify the people in that
21 photograph?

22 A. Yes.

23 Q. Who are they?

24 A. On the left is Scott Dahlberg. And Andy.

25 Andy Anderson was the young man there. Next



1 to him is Jim Thorn (ph). And on the far
2 right is me, Jim Sullivan.

3 Q. And that was taken at the first Yenke reunion
4 in Hendersonville, Tennessee?

5 A. Yes, it was, at the dinner.

6 Q. What is the box that the young man is
7 holding?

8 A. We awarded him the first model, the car that
9 we first did, Yenke that we did, which was a
10 LeMans blue '69 Camaro.

11 Q. That award was given during the dinner
12 ceremony?

13 A. Yes, it was.

14 Q. You also heard Mr. Dahlberg's testimony about
15 policing the Yenke trademark, or measures
16 that Supercar Collectables took to police the
17 Yenke trademark. Do you agree with the
18 testimony that he gave?

19 A. Yes, I do.

20 Q. Do you recall specific names of any companies
21 that you made cease and desist demands to or
22 infringement notices, other than Revell?

23 A. Revell is the only one that kind of stands
24 out in my mind. I don't remember the others.
25 I know there was at least a couple other



1 ones.

2 Q. Is it your understanding that the license
3 agreement that was entered into between
4 Supercar Collectables and Revell was the
5 result of Supercar Collectables' actions to
6 police its trademark?

7 A. Yes.

8 Q. Do you own an actual Yenko Chevrolet?

9 A. Yes, I do.

10 Q. What year is it?

11 A. It's a '69 Camaro.

12 Q. How long have you had it?

13 A. Nine, ten years, I guess, now.

14 Q. Is it restored?

15 A. It is.

16 Q. Did you do at least some of the restoration
17 yourself?

18 A. I did, yes.

19 Q. Did you purchase restoration parts to use in
20 restoring that Yenko Chevrolet?

21 A. Yes, I did.

22 Q. Would you have been able to restore that
23 automobile in the manner that it is today
24 without the availability of restoration
25 parts?



1 A. No, I would not have.

2 Q. During your time with Supercar Collectables,
3 do you recall having publicly advertised the
4 Yenko models that were offered by Supercar
5 Collectables?

6 A. Yes, I do.

7 Q. Can you tell me some of the media in which
8 they were advertised?

9 A. Hemmings Motor News, Super Chevy, I believe
10 Hot Rod Magazine. A number of other
11 publications that I don't recall the name of
12 right now.

13 Q. Did at least some of those advertisements
14 actually show photographs of your Yenko
15 models?

16 A. Yes. I mean, we were a new business. That's
17 the only way we could obtain customers is to
18 advertise. So we hit it pretty hard at
19 first.

20 Q. Between 1996 and 2009, are you aware of any
21 reason that the Yenko family or
22 representatives of the Yenko estate could not
23 have discovered your use of the Yenko
24 trademark, had they searched for it?

25 A. No, I don't believe that would happen. You



1 know, I don't believe that's possible.

2 Q. Do you recall when Supercar Collectables
3 established a website?

4 A. I don't. I would have to guess maybe about 9
5 or 10 years ago.

6 Q. To your knowledge, has Yenko models always
7 been shown on its website?

8 A. Yes, absolutely.

9 Q. When you applied for registration of the
10 Yenko trademark, did anyone oppose your
11 application for registration?

12 A. No.

13 Q. Did you hear any objections from the Yenko
14 estate or anyone representing the Yenko
15 estate?

16 A. No, I did not.

17 Q. Are you aware of any objections from the
18 Yenko estate or anyone representing the Yenko
19 estate prior to 2009 regarding your use of
20 the Yenko trademark?

21 A. I am not, no.

22 Q. I'm going to ask the court reporter to hand
23 you what was previously marked as
24 Respondent's Exhibits 32 and 33. I believe
25 you heard Mr. Dahlberg's testimony regarding



1 those exhibits.

2 Please look at them and tell me, if
3 you can, what you recognize them to be.

4 A. Okay. 32 is a '69 Yenko LeMans blue
5 Chevelle. That was for the 2004 Supercar
6 reunion. The official car of that event.

7 R33 is a '69 Yenko Camaro from
8 Performance Years. That was for the Supercar
9 reunion 11.

10 Q. Were those both manufactured under contract
11 from Supercar Collectables?

12 A. To the best of my knowledge, yes.

13 Q. Supercar Collectables then supplied them to
14 Performance Years Enterprises is that
15 correct?

16 A. Yes.

17 MR. BUYAN: I think that ends my
18 direct examination of Mr. Sullivan.

19 MR. BULLWINKEL: Very good.
20 Mr. Sullivan, can you continue right now?

21 THE WITNESS: Yes.

22 * * *

23 EXAMINATION

24 * * *

25



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1 BY MR. BULLWINKEL:

2 Q. What's your present age?

3 A. Fifty-nine.

4 Q. How old were you when Don Yenke died in 1987?

5 A. I don't know. Probably 35, 36.

6 Q. Did you ever meet Don Yenke?

7 A. No, I never did.

8 Q. Did you ever talk to him?

9 A. I never did.

10 Q. Other than that one event at the reunion, did
11 you ever talk to his widow or either of his
12 daughters?

13 A. Not other than at the event, no.

14 Q. When you applied for your trademark
15 registration, and I think the record shows
16 July 1995, what was then your employment?

17 A. I was auto parts manager at a dealership.

18 Q. What dealership?

19 A. It was at that time Wayzata Nissan.

20 Q. Did you own a Yenke car then?

21 A. I did not.

22 Q. When did you acquire the Yenke car you now
23 own?

24 A. It's been about 9 or 10 years ago.

25 Q. What color is it?



1 A. It's fathom green.

2 Q. Is it, other than color, substantially the
3 same as the one that's pictured on that last
4 exhibit that you looked at?

5 A. It's not quite like that. It's similar.
6 It's not lettered up with a big Yenko crest
7 on it. It doesn't have a spoiler.

8 This is a little different version
9 here.

10 Q. Do you have it insured?

11 A. I do.

12 Q. For how much?

13 A. I believe I have it insured for \$150,000.

14 Q. How much did you pay for it when you bought
15 it?

16 A. I believe I paid about \$40,000 for it.

17 Q. Is it listed on the Yenko Sports Car Club's
18 roster?

19 A. It is.

20 Q. Are you a member of the Yenko Sports Car
21 Club?

22 A. I was at one time. I'm not sure if I still
23 am. I have posted on that site but not for a
24 number of years.

25 Q. In July of 1995 when you applied for your



1 registration, you didn't own a Yenke and you
2 weren't working for a Chevrolet dealer.

3 What were you doing that put you in
4 the business of selling toy cars?

5 A. Well, Jim Thorn (ph), Scott Dahlberg and
6 myself were friends and we always were kind
7 of interested in toy cars so we were going to
8 start out and try to form a business.

9 And we were into the muscle car era
10 and stuff so we thought we would start there.
11 I researched the trademark, saw that it had
12 expired and went about registering the
13 trademark so we could go about things
14 correctly.

15 Q. Did you research any other trademarks
16 belonging to other famous automotive
17 constructors or drivers?

18 A. No.

19 Q. Why did you just pick Yenke?

20 A. Basically, at that point Ertl was making the
21 '69 Camaro. That body style. So it would be
22 an easy transition with some minor tooling
23 changes to do a car that we already had the
24 tooling and stuff for.

25 Q. Did you make any effort to contact any



1 representative of the Yenke family before you
2 did that?

3 A. I did not.

4 Q. Did you assume since registration had expired
5 that it was free for you to pick up and adopt
6 for your own?

7 A. I did.

8 Q. Were you present during the entire testimony
9 of Mr. Dahlberg just now?

10 A. Yes, I was.

11 Q. Was there anything he said that you found not
12 to be factually accurate?

13 A. No, not at all.

14 Q. Do you know any other owners of actual
15 original Yenke automobiles?

16 A. I have met several owners over the years,
17 yes.

18 Q. Do you know if Mr. Heth still has one?

19 A. I do not. I know he used to have one, I
20 believe, but I don't know if he does anymore.

21 Q. And do you know what happened to it?

22 A. I do not.

23 Q. Have you applied, since July 1995, have you
24 applied to register as trademarks any other
25 automotive names?



- 1 A. I have not, no.
- 2 Q. So this is the one and only trademark
- 3 registration you applied for in your life?
- 4 A. Yes.
- 5 Q. If this registration were canceled, how would
- 6 that affect you economically?
- 7 A. At this point, being out of the company, it
- 8 probably would not affect me at all.
- 9 Q. And the third co-founder of the company, was
- 10 that Jim Thoren (ph)?
- 11 A. Yes.
- 12 Q. What's he doing now?
- 13 A. What is he doing?
- 14 Q. Yes.
- 15 A. He is back at Supercar Collectables answering
- 16 the phone and running the store, I am
- 17 guessing, at this point.
- 18 Q. That's not a large company, is it?
- 19 A. It is not.
- 20 Q. How many employees, do you know, work at
- 21 headquarters?
- 22 A. I know Jim and Scott. There is another
- 23 person there. And I think they have a
- 24 shipper that helps ship out the orders on
- 25 occasion.



1 Q. Does it have a warehouse where it keeps
2 stock?

3 A. Yes, they do.

4 Q. Where is that?

5 A. That is in Maple Grove, Minnesota.

6 Q. How many people work there?

7 A. That is the warehouse and that's the
8 headquarters there. So that would be three
9 full-time people and to the best of my
10 knowledge, recently it's just a part-time
11 shipper.

12 MR. BULLWINKEL: Well, sir, thank
13 you for answering my questions. I think I
14 have exhausted myself here and perhaps you,
15 as well.

16 Rob, do you want to ask some more?

17 MR. BUYAN: No, I don't think we
18 have any re-direct for Mr. Sullivan. Thank
19 you, Mr. Sullivan.

20 MR. BULLWINKEL: And Mr. Dahlberg,
21 if you are still there, we appreciate your
22 cooperation.

23 THE WITNESS: Thank you.

24 (Discussion held off the record.)

25 MR. BUYAN: I would like to ask



1 that we stipulate to have the transcripts
2 reviewed and signed outside the presence of
3 the court reporter.

4 MR. BULLWINKEL: It is so
5 stipulated. So they'll be prepared for
6 signature under penalty of perjury outside of
7 your presence.

8 (Discussion held off the record.)
9 (Telephonic deposition concluded at 2:25
10 p.m.)



DEPOSITION ERRATA SHEET

Our Assignment No. 267850

Case Caption: Terri Yenke Gould

vs.

General Marketing Capital,
Inc., et al

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my telephonic Deposition, outside the
presence of the court reporter, taken in the
captioned matter or the same has been read to
me, and the same is true and accurate, save
and except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the 21 day of SEPT, 2011.
JAMES R. SULLIVAN

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1 STATE OF MINNESOTA)

2
3 COUNTY OF RAMSEY)

4 Be it known that I took the
5 deposition of JAMES R. SULLIVAN on August 30,
6 2011;

7 That I was then and there a
8 notary public in and for the County of
9 Ramsey, State of Minnesota, and that by
10 virtue thereof I was duly authorized to
11 administer an oath;

12 That the witness before
13 testifying was by me first duly sworn to
14 testify the whole truth and nothing but the
15 truth relative to said cause;

16 That the testimony of said
17 witness was recorded in stenotype by myself
18 and transcribed into typewriting under my
19 direction, and that the deposition is a true
20 record of the testimony given by the witness
21 to the best of my ability;

22 That I am not related to any of
23 the parties hereto nor interested in the
24 outcome of the action;

25 That the reading and signing by
the witness and Notice of Filing were not
waived;

Witness my hand and seal this 8th
day of September, 2011.

Vicki A. Gardner

Vicki A. Gardner
COURT REPORTER



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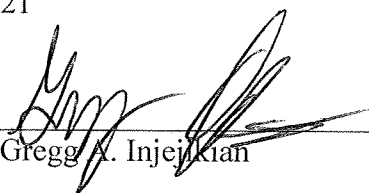
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Non-Confidential Testimony of James R. Sullivan** has been served on George E. Bullwinkel, Esq. by mailing said copy on September 29, 2011, via electronic mail and First Class Mail, postage prepaid to:

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